A 000 690 092 2
UC SOUTHERN REGIONAL LIBRARY FACILITY

California
egional
acility

UNIVERSITY
OF CALIFORNIA
LOS ANGELES

SCHOOL OF LAW
LIBRARY

How To Obtain A Patent

Modern American Law Lecture

Blackstone Institute, Chicago

Digitized by the Internet Archive
in 2007 with funding from
Microsoft Corporation

http://www.archive.org/details/howtoobtainpaten00hopkiala

HOW TO OBTAIN A PATENT

BY

JAMES L. HOPKINS, LL.B.

One of a Series of Lectures Especially Prepared for the Blackstone Institute

BLACKSTONE INSTITUTE
CHICAGO

Copyright, 1916, By Blackstone Institute

T
H7756h
1916

JAMES L. HOPKINS

RJF 29 Feb 68

JAMES LOVE HOPKINS

James Love Hopkins, who contributes the following lecture, is a native of St. Louis, where he was born in 1868. After graduating from the public High School he entered Washington University, entering the Law School of that institution at the end of his freshman year. After one year in the Law School he was admitted to the bar, in 1889, and has been practicing law ever since. After six years of practice he completed the law school course, taking the degree of LL.B. in 1895.

While in general practice, his argument on an insurance case led the late Lyne Metcalfe, editor of the Central Law Journal, to ask him to write an article on insurable interest, which was followed by other contributions to that publication, and the article on Disbarment in the Encyclopedia of Pleading and Practice. In this preliminary law writing he was encouraged and advised by the late Seymour D. Thompson, editor of the American Law Review, and a talented and scholarly author of many legal texts.

His first book, Hopkins on Unfair Trade, was published in 1899, its second edition was published in 1905 under the title Hopkins on Trademarks, and the third edition is now in press, being the first American text on the subject to attain a third edition. His two-volume work on Patents was recently published and has been accepted as a standard authority. His hand-book on the New Equity Rules, dedicated to the late Mr. Justice Lurton of the United States Supreme Court, was selected by the Department of Justice for the use of the Federal judges and district attorneys throughout the United States. Hopkins' Judicial Code has also gone into extensive use. The treatises on Banks and Trust Companies and Unfair Competition and Good Will, in Modern American Law, were written by Mr. Hopkins.

Mr. Hopkins has been in Federal practice exclusively since 1898, and has never held public office. He is a member of the Committee on Admission to the Bar of the United States District Court at St. Louis.

As to his practice, his name is familiar to all users of the Federal Reporter. He has appeared as special Patent Counsel for the City of St. Louis and for the City and County of San Francisco.

HOW TO OBTAIN A PATENT

By

JAMES L. HOPKINS, LL.B.

1. PRELIMINARY OBSERVATIONS.

The Patent Office of the United States has what is sometimes loosely called a "bar" of its own. But that bar is made up of men of varying legal attainments, ranging from leaders of the real patent bar—lawyers not only admitted to the bar but qualified to act as counsel in advisory and litigated questions of patent law—down to mere "solicitors" of patents, who are, in many cases, utterly ignorant of law. This astonishing condition of things has been deplored by the bar generally, and is due to the following Patent Office rule, under which no legal education is a prerequisite to admission to practice in that department.

"A register of attorneys will be kept in this office, on which will be entered the names of all persons entitled to represent applicants before the Patent Office in the presentation and prosecution of applications for patent. The names of persons in the following classes will, upon their written request, be entered upon this register:

(a) Any attorney at law who is in good standing in any court of record in the United States or any of

the States or Territories thereof and shall furnish a certificate of the clerk of such United States, State, or Territorial court, duly authenticated under the seal of the court, that he is an attorney in good standing.

(b) Any person not an attorney at law who is a citizen or resident of the United States and who shall file proof to the satisfaction of the Commissioner that such person is of good moral character and of good repute and possessed of the necessary legal and technical qualifications to enable him to render applicants for patents valuable service and is otherwise competent to advise and assist them in the presentation and prosecution of their applications before the Patent Office."

The Patent Office is a part of the Department of the Interior, and is under the direction of the Commissioner of Patents, the duties of whose office call for legal attainments of a high order. The present Commissioner, Thomas Ewing, of New York, and Ben Butterworth, among his predecessors, are striking examples of the combination of legal education and executive ability required in this position.

In the vast range of scientific work which is presented to the Patent Office, there are developed many peculiar specialties. Certain men specialize in hydraulics, others in electricity, etc., just as do the inventors they represent. The soliciting of a patent must be grounded upon a basic knowledge of the law of contracts; for a patent is merely a contract between the inventor and the public as parties; the consideration of the grant of the patent is the disclosure, in

full and apt terms, of a new and useful invention. If the disclosure is not such as to teach the public (those skilled in the art to which the invention relates) how to practice the invention after the monopoly has expired, there is a want of consideration; and so, if the thing is not new, there is no consideration, if it is not useful (within the meaning of the patent statute) there is no consideration. Again, the thing patented may be new, and may be useful, but if its production did not embody invention there is no consideration for the grant of the patent and it will be held void. So much to show the vital necessity of a working knowledge of the law of contracts by one who attempts to solicit a patent.

Next comes the patent statute—that is to say, all of the enactments of Congress concerning the issuance of patents which are now in force; and this is outlined in Judge Holt's monograph on Patents in Modern American Law.

Next come the Rules of the Patent Office, promulgated by the Commissioner under the express statutory authorization of Congress; these rules have the force and effect of statute law, in so far as they are not in conflict with statutes of the United States.

It follows from what has been said that no invention should be intrusted to a patent solicitor who is not a lawyer; the inventors who have done otherwise have suffered enormous losses. Nor does it follow that the ablest patent lawyers can always obtain valid patents. The law of patents has been termed "the metaphysics of the law." There is no department of the law more difficult, more exacting, or in which

costly errors are more apt to be made, even by the most learned and painstaking lawyers. But it is the duty of the lawyer in general practice to warn his clients interested in inventions of the danger of intrusting the most difficult of all legal writing to any but skilled legal guides. And it is the duty of the student who would qualify himself to practice patent law to ground himself firmly in the common law of contracts before attempting to study the statutes and rules with which he is to be concerned. Once armed with knowledge of the law of his subject, he need have no fear of shortcoming in mechanics, chemistry or other technical knowledge. That is supplied by the inventor, and by mechanical experts. The law of patents is so highly developed, so intricate, and so unsettled in many vital particulars that the patent lawyer can never acquire perfect knowledge of the law. The best patent lawyers approach each new case with an open mind as to the facts, gather the facts from those skilled in the subject to which the invention relates, and apply the law to those facts. What is loosely called "scientific reading" has its place in equipping the patent lawyer, but that place is always secondary to mastery of the patent law.

2. THE FIRST CONSULTATION.

The inventor brings his lawyer a model, saying, "I want a patent on this shoe-last." Looking at the model, it appears to be an ordinary wooden last, the heel and toe sections being joined by a curious and ingenious hinge. So the lawyer advises, "What you want is a patent for this hinge"—a new thought to

the inventor, who afterwards draws royalty for the use of that hinge used in structures other than shoe-lasts.

This typical case illustrates the importance of the lawyer finding out what the invention really is. Important here to know you are right before going ahead.

3. THE PRELIMINARY EXAMINATION.

Frequently a search, called a "pre-ex.," is made to ascertain whether the thing in question is probably patentable. Such searches can only be conveniently made in the reference room in the Patent Office, where copies of issued patents are kept in an attempted classification. The question of classification is very troublesome, and is under constant consideration and revision by the Patent Office.

4. THE DRAWING.

Deciding that the client has a patentable invention, we call in the draftsman to illustrate a preferred embodiment of the invention. The Patent Office drawing is highly technical, and quite beyond the skill of the ordinary mechanical draftsman. The case must be fully—but not too fully—illustrated. The drawing must be on bristol board of certain quality and size, with certain marginal lines and certain signatures of the inventor (may be by attorney) and witnesses. Then, too, certain symbols indicate by a few lines complicated electrical structures, while certain shadings indicate wood, or glass, or other material. Much depends on how the invention is pic-

tured, and a good drawing is a good foundation for the lawyer's work.

5. CONSTITUENT PARTS OF THE APPLICATION.

Every application for patent comprises a petition, a description, one or more claims, and the oath. There is usually a drawing, and a power of attorney, the latter being embodied in the same instrument with the petition. The word "specification" usually and in a technical sense embraces the drawing, description and claims; but in the often-used expression, "specification and claims," the word specification means the description alone.

6. THE PETITION.

The petition will be best understood by reading the form therefor prescribed by the Patent Office.

"To the Commissioner of Patents:

Your petitioner, ..., a citizen of the United States and a resident of ....., in the county of ..... and State of ..... (or subject, etc), whose post-office address is ....., prays that letters patent may be granted to him for the improvement in ....., set forth in the annexed specification.

Signed at ....., in the county of ..... and State of ....., this ..... day of ....., 19..

...."

7. THE DESCRIPTION.

The descriptive part of the specification is of vital importance. It begins with a short description, then describes briefly the various figures shown in the drawings, then proceeds with a detailed description,

followed, preferably, by a distinct and separate description of the operation of the machine, in a machine application. The best way to study style and terminology is to study copies of well solicited patents. Here note that, if the same invention is submitted to fifty patent lawyers, it is quite impossible that any two of them would use identical language in describing it; clearness, conciseness, accuracy, freedom from ambiguity, are to be found in the really fine work done in Patent Office practice.

The rules provide (Rule 39),

"The following order of arrangement should be observed in framing the specification:

(1) Preamble stating the name and residence of the applicant and the title of the invention.
(2) General statement of the object and nature of the invention.
(3) Brief description of the several views of the drawings (if the invention admits of such illustration).
(4) Detailed description.
(5) Claim or claims.
(6) Signature of applicant."

The description should be written with the mind firmly fixed on the new thing the inventor has produced. The prior art—meaning the same class of invention in the past—may be referred to, to point out what new result the inventor has accomplished, or what old result he has procured in a new, and cheaper, or quicker, or otherwise better, way.

Finally, it is an excellent plan to write the claims before writing the description. The claim defines what the inventor has patented to him, and its terms of art must be based on corresponding antecedent

language in the description. Therefore, writing the claims first establishes the verbiage to be used in the description, and, better still, crystallizes the invention in the scrivener's mind so that in his description he writes always with a view to emphasizing that which is new.

8. THE CLAIMS.

Judge Holt, in Modern American Law, has defined the claim, and pointed out its essentials. Repeating what has been said above, the claim should be written first. It should be confined to the smallest number of elements present in the invention which have novelty as a combination, and which form, as Judge Holt has elucidated, a true combination as distinguished from an aggregation. There is no danger of having too many claims—as many as you have the patience to write, and the good fortune to get allowed; for each claim is a patent in itself, and either claim may be held void in litigation without in anywise affecting the validity of the other.

To learn how to write claims, study the claims that have been through the fire of litigation. Let us take as an example this claim: "A switch pin having a resilient tongue pivoted within or upon its tip, as set forth." This is claim 1 of U. S. Letters Patent No. 223,969, issued January 27, 1880, to Watts, for "An electrical switch pin," and the claim was adjudged valid by Judge Morris, 77 Federal Reporter, page 895. What a thing of beauty this claim is—not a superfluous syllable, no shadow of ambiguity. Just one grave defect—the words "as set forth"

should not have been used. They add nothing to the value of the claim, and, like "substantially as described" are not only surplusage, but may be held to be words of limitation.

So beginning with the simplest combination in the invention, having the fewest elements, we will claim the more complex combinations until we have the invention guarded against what the infringer of the future will try to do by way of using the principle of our invention, but with a change of form, or variation in mode of operation, which will give the defendant room to argue non-infringement when brought to book.

Claims for a machine may be drawn to any part of the machine, or to the machine as a whole—though such "omnibus" claims are seldom worth the paper they are written on, if the machine is at all complicated. Claims for an article of manufacture should cover separately and severally each of its patentable features. In claims for compositions of matter only the indispensable ingredients should be included, with their proportions. Processes or methods consist of two or more stages or operations usually called steps, and the claim should be drawn to only the indispensable steps, and in their proper order.

In design patents there can be but a single claim, and that is—"The ornamental design for a ....., substantially as shown."

9. THE OATH.

The following form of oath is prescribed by the Patent Office:

"..... } ss.
..... }

....., the above-named petitioner, being sworn (or affirmed), depose, and say.. that ..... citizen.. of ..... and resident.. of ....., that ..... verily believe ..... to be the original, first, and ..... inventor.. of the improvement in ..... described and claimed in the annexed specification; that ..... do.. not know and do.. not believe that the same was ever known or used before ..... invention or discovery thereof, or patented or described in any printed publication in any country before ..... invention or discovery thereof, or more than two years prior to this application, or in public use or on sale in the United States for more than two years prior to this application; that said invention has not been patented in any country foreign to the United States on an application filed by ..... or ..... legal representatives or assigns more than twelve months prior to this application; and that no application for patent on said improvement has been filed by ..... or ..... representatives or assigns in any country foreign to the United States, except as follows: .....

Inventor's full name: .....

Sworn to and subscribed before me this ..... day of ....., 19..

(Signature of justice or notary)

.....

(Seal) .....

(Official character)"

Here we must have a care to decide whether the invention is sole or joint. If a joint invention there must be joint applicants and a joint oath, or the resulting patent will be void. Conversely, if a sole invention, a joint oath will vitiate the patent. Practically, where a group of men work on the development of an invention there is nearly always difficulty in determining who are the real inventors, or whether it is a sole or joint invention. This is a constantly

recurring question in the office of the active patent practitioner, and frequently requires great care in its consideration.

10. THE SEAL OF THE NOTARY.

The Patent Office rule requires—

"When the oath is taken before an officer in any country including the United States, all the application papers must be attached together and a ribbon or tape passed one or more times through all the sheets of the application, and the ends of said ribbon or tape brought together under the seal before the latter is affixed and impressed, or each sheet must be impressed with the official seal of the officer before whom the oath was taken, or, if he is not provided with a seal, then each sheet must be initialed by him."

11. THE FILING.

Now having our application written and signed and sworn to, a fee of $15.00 entitles us to file it, and starts the examiner on a task that is often worth hundreds of dollars to the applicant, in bringing the relevant prior art to light. The case must be filed within 30 days from the date of the oath, or a new oath will be required. A filing receipt bearing the date of its issuance and the serial number of the application is furnished by the Patent Office. The application holds that serial number until the patent is printed for issue, when it is given a new and final patent number.

12. THE FIRST OFFICIAL ACTION.

The application having been received by the Patent Office and the filing receipt issued, the application is assigned to its proper division for exami-

nation. It then awaits its turn for examination. The examiner, upon reaching it, examines it—drawing, description and oath—for informalities, such as defects in the drawings, want of signatures of witnesses, failure of the notary to affix his seal, and the like. Then he examines the description, to understand the invention and see that it is sufficiently described. Then the claims, to see if they are good in form, and sustained by antecedent description. Then the merits—and here begins the real test of the learning and skill of the examiner. He may cite us to encyclopedias, scientific texts, patents of any foreign country, or may describe old and unpatented things within his own knowledge as having been in use. See Drawbaugh v. Seymour, 77 Official Gazette, 318. The statute reads:

"§ 4893. On the filing of any such application and the payment of fees required by law, the Commissioner of Patents shall cause an examination to be made of the alleged new invention or discovery; and if on such examination it shall appear that the claimant is justly entitled to a patent under the law, and that the same is sufficiently useful and important, the Commissioner shall issue a patent therefor."

So if our application is in proper form, and we show and describe a new and useful invention, the application is allowed at this stage. But usually the first action is a rejection of all or a part of the claims, and when this is the case an official letter gives us the grounds of rejection. The statute reads:

"§ 4903. Whenever, on examination, any claim for a patent is rejected, the Commissioner shall notify the applicant thereof, giving him briefly the reasons for such rejection, together with such information and references as may be useful in judging

of the propriety of renewing his application or altering his specification; and if, after receiving such notice, the applicant persists in his claim for a patent, with or without altering his specifications, the Commissioner shall order a re-examination of the case."

13. DIVISION OF APPLICATIONS.

While no U. S. Patent has ever been held bad because containing more than one invention, and the statute is silent upon the subject, it is obvious that there must be some rule as to this. We find in the Rules the following:

"41. Two or more independent inventions can not be claimed in one application; but where several distinct inventions are dependent upon each other and mutually contribute to produce a single result they may be claimed in one application.

42. If several inventions, claimed in a single application, be of such a nature that a single patent may not be issued to cover them, the inventor will be required to limit the description, drawing, and claim of the pending application to whichever invention he may elect. The other inventions may be made the subjects of separate applications, which must conform to the rules applicable to original applications. If the independence of the inventions be clear, such limitation will be made before any action upon the merits; otherwise it may be made at any time before final action thereon, in the discretion of the examiner.

A requirement of division will not be repeated without the written approval of a Law Examiner. After a final requirement of division, the applicant may elect to prosecute one group of claims, retaining the remaining claims in the case with the privilege of appealing from the requirement of division after final action by the Examiner on the group of claims prosecuted."

In practice the application of these rules is usually wholesome, and division required only where there are clearly present more than one invention. But in exceptional cases the rule is administered arbi-

trarily and with no apparent reason save to make two applications grow where but one grew before. The subject is too difficult to dwell upon here. The opinion of Mr. Justice McKenna in the United States ex rel. Steinmetz v. Allen, 192 U. S. 543, 48 L. Ed. 563, may be read for fuller treatment of this topic.

14. AMENDMENT.

The right to amend the application is given by statute. The Patent Office rule is—

"68. The applicant has a right to amend before or after the first rejection of action; and he may amend as often as the examiner presents new references or reasons for rejection. In so amending, the applicant must clearly point out all the patentable novelty which he thinks the case presents in view of the state of the art disclosed by the references cited or the objections made. He must also show how the amendments avoid such references or objections.

After such action upon an application as will entitle the applicant to an appeal to the examiners-in-chief (Rule 134), or after such appeal has been taken, amendments canceling claims or presenting those rejected in better form for consideration on appeal may be admitted; but the admission of such an amendment or its refusal, and any proceedings relative thereto, shall not operate to relieve the application from its condition as subject to appeal, or to save it from abandonment under Rule 171. If amendments touching the merits of the application are presented after the case is in condition for appeal, or after appeal has been taken, they may be admitted upon a showing, duly verified, of good and sufficient reasons why they were not earlier presented. From the refusal of the primary examiner to admit an amendment a petition will lie to the Commissioner under Rule 145. No amendment can be made in appealed cases between the filing of the examiner's statement of the grounds of his decision (Rule 135) and the decision of the appellate tribunal. After decision on appeal amendments can only be made as provided in Rule 142, or to carry into effect a recommendation under Rule 139."

The amendment may extend to both drawing, description and claims. The amendment frequently goes to the length of cancelling the entire description and the claims, and re-writing the whole. Certain formalities are provided for by rule.

"73. In every amendment the exact word or words to be stricken out or inserted in the application must be specified and the precise point indicated where the erasure or insertion is to be made. All such amendments must be on sheets of paper separate from the papers previously filed, and written on but one side of the paper. Erasures, additions, insertions, or mutilations of the papers and records must not be made by the applicant."

"Amendments and papers requiring the signature of the applicant must also, in case of assignment of an undivided part of the invention, be signed by the assignee."

"74. When an amendatory clause is amended, it must be wholly rewritten, so that no interlineation or erasure shall appear in the clause, as finally amended, when the application is passed to issue. If the number or nature of the amendments shall render it otherwise difficult to consider the case, or to arrange the papers for printing or copying, the examiner may require the entire specification to be rewritten."

§4894, R. S. U. S., and Rule 77, both fix the time limit of amendment at one year after the date of the last official notice of action by the Patent Office.

The difficulty involved in amending may be greatly lessened by a personal interview with the examiner; a half hour in consultation will often save months of correspondence. Such interviews, under Rule 152, cannot be had before the first official action of the application. A number of the older examiners are veritable walking encyclopedias of technical knowledge. The more able the examiner the more certain

he is to treat the applicant and his attorney with patience, courtesy, and helpful suggestions. Many a valuable claim is suggested by the examiner, who is almost always alert in understanding and appreciating a really novel and valuable invention. It is no part of the examiner's duty to antagonize the applicant, and in practice he seldom does. It is clearly the examiner's duty to see that claims are properly limited or rejected; first, because he must protect the public in not granting a monopoly on something the public already has the right to use; second, because the inventor should be protected against waste of time and money on a thing which is not patentable; third, to protect possible investors from being deceived into making idle investments. Many of the cleverest swindlers pose as inventors or promoters of patent property. So the task of the examiner is one involving judicial functions, in which he must not be swerved from the right course by indifference, sympathy, favoritism or interest. And the examining corps lives up to this high standard with extraordinary fidelity.

15. APPEALS.

Assuming that the primary examiner has twice rejected our application, we have the right of appeal to the Board of Examiners-in-Chief, consisting of three members, who hold their hearings in the Patent Office, where we may be heard orally if we indicate our desire at the time of filing the appeal. (Rule 137.) The appeal fee is $10.00. "The appeal must set forth in writing the points of the decision upon

which it is taken, and must be signed by the applicant or his duly authorized attorney or agent." (Rule 133.) The primary examiner briefs the case against us in the form of an "Examiner's statement" (Rule 135).

If defeated by the Board, we may appeal to the Commissioner, by paying $20.00 as an appeal fee. The Examiner's statement and the opinion of the Board are both in the lists against us, and if we are again beaten we go to the Court of Appeals of the District of Columbia, a general appellate tribunal for the inferior courts of Washington. This appeal must be taken within forty days from the date of the Commissioner's decision, by filing with him a notice of appeal and an assignment of reasons of appeal. Then we file a certified transcript of the Patent Office record of the case with the Clerk of the Court of Appeals, and there file a petition for appeal addressed to that court, and make a deposit of $15.00 with the clerk. The clerk then estimates the cost of printing the record, which of course depends upon the length of the record. We then pay the clerk the amount called for by his estimate, he has the record printed and the cause docketed. The Court of Appeals consists of the Chief Justice and two Associate Justices, and serves as a means of keeping the Patent Office rules and practice in conformity to the letter and the spirit of the statutes. The court seldom reverses a decision in which all of the tribunals of the Patent Office have concurred. On such appeals in *ex parte* cases the Commissioner is represented by counsel.

16. ACTIONS TO COMPEL THE GRANT OF LETTERS PATENT.

As Judge Holt has pointed out in section 90 of his monograph on Patents, in Modern American Law, this is a statutory action seldom resorted to in *ex parte* cases; nevertheless we will give it passing consideration, as the remedy provided for ultimate review of the refusal of an application for patent. The statutory provision reads:

§4915. "Whenever a patent on application is refused, either by the Commissioner of Patents or by the Supreme Court (now the Court of Appeals) of the District of Columbia upon appeal from the Commissioner, the applicant may have remedy by bill in equity; and the court having cognizance thereof, on notice to adverse parties and other due proceedings had, may adjudge that such applicant is entitled, according to law, to receive a patent for his invention, as specified in his claim, or for any part thereof, as the facts in the case may appear."

The statute further provides that all the expenses of the proceedings shall, if there is no party dependent other than the Commissioner, be paid by the applicant, whether the final decision is in his favor or not.

Such cases are to be tried on all competent evidence adduced, and are not limited to the record that was before the Patent Office. The action is governed by the usual rules obtaining and in force in the Federal courts of equity. This express statutory remedy has been held to exclude the resort to mandamus as a means of reviewing the Patent Office decision in finally refusing a patent; but mandamus may be employed to review decisions of the Patent Office on other subjects, such as its power to pass a certain

rule of procedure, when the rule is alleged to contravene the statute. It has been held that the proceeding under this section is a proper means of compelling the grant of a reissue application. The object of the enactment was to preclude the finality of decisions refusing a patent, just as the courts have never treated the affirmative action of the Patent Office in granting an application, or deciding an interference, as having more than prima facie weight. As the successful applicant for a patent must have his day in court, and an adjudication of validity before his patent is regarded as anything more than a grant of the right to file a suit, so the unsuccessful applicant is given his day in court to the end of securing a strictly judicial adjudication upon his rights.

17. INTERFERENCES; GENERAL CONSIDERATION.

Under the authority of §4904, Revised Statutes of the United States, the Patent Office has adopted the following rules defining interferences, and the cases in which they will be declared:

"93. An interference is a proceeding instituted for the purpose of determining the question of priority of invention between two or more parties claiming substantially the same patentable invention. The fact that one of the parties has already obtained a patent will not prevent an interference, for, although the Commissioner has no power to cancel a patent, he may grant another patent for the same invention to a person who proves to be the prior inventor.

94. Interferences will be declared between applications by different parties for patent or for reissue when such applications contain claims for substantially the same invention which are allowable in the application of each party, and interferences will also be declared between applications for patent, or for

reissue, and unexpired original or reissued patents, of different parties, when such applications and patents contain claims for substantially the same invention which are allowable in all of the applications involved: Provided, That where the filing date of any applicant is subsequent to the filing date of any patentee, the applicant shall file an affidavit that he made the invention before the filing date of the patentee.

Parties owning applications or patents which contain conflicting claims will be required before an interference is declared to show cause why these claims shall not be eliminated from all but one of the applications or patents of common ownership."

18. THE DECLARATION OF INTERFERENCE, AND PRELIMINARY STATEMENT.

When an interference is found to exist, it is the duty of the primary examiner to establish the issues of the interference, that is to say, claims identical in terms, and which can be read upon the drawing and description of each of the parties. There is no limit to the number of parties, three or more applications being frequently involved in the same interference. These interfering claims are called "counts" in interference practice. All of the preliminaries being arranged, the applications are forwarded to the Examiner of Interferences, who sits at a Court of First Instance in these cases. He first reviews the work of the Primary Examiner, to see whether the issues have been clearly defined and whether the notices of interference are clear in language and correct in form; if there be any material disagreement between him and the Primary Examiner, it is reviewed by the Commissioner (Rules 98 and 99). The Examiner of Interferences formally declares an interference by forwarding notices to each of the parties, in which

are fixed the dates within which "preliminary statements" must be filed. The preliminary statement must conform with the requirements of the rules, which are as follows:

"110. Each party to the interference will be required to file a concise preliminary statement, under oath, on or before a date to be fixed by the Office, showing the following facts:

(1) The date of original conception of the invention set forth in the declaration of interference.

(2) The date upon which the first drawing of the invention and the date upon which the first written description of the invention was made.

(3) The date upon which the invention was first disclosed to others.

(4) The date of the reduction to practice of the invention.

(5) A statement showing the extent of use of the invention.

(6) The applicant shall state the date and number of any application for the same invention filed within twelve months before the filing date in the United States, in any foreign country adhering to the International Convention for the Protection of Industrial Property or having similar treaty relations with the United States.

If a drawing has not been made, or if a written description of the invention has not been made, or if the invention has not been reduced to practice or disclosed to others or used to any extent, the statement must specifically disclose these facts.

When the invention was made abroad the statement should set forth:

(1) That the applicant made the invention set forth in the declaration of interference.

(2) Whether or not the invention was ever patented; if so, when and where, giving the date and number of each patent, the date of publication, and the date of sealing thereof.

(3) Whether or not the invention was ever described in a printed publication; if so, when and where, giving the title, place, and date of such publication.

(4) When the invention was introduced into this country, giving the circumstances with the dates connected therewith, which are relied upon to establish the fact.

The preliminary statements should be carefully prepared, as the parties will be strictly held in their proofs to the dates set up therein.

If a party prove any date earlier than alleged in his preliminary statement, such proof will be held to establish the date alleged and none other.

The statement must be sealed up before filing (to be opened only by the Examiner of Interferences; see Rule 111), and the name of the party filing it, the title of the case, and the subject of the invention indicated on the envelope. The envelope should contain nothing but this statement.

111. The preliminary statements shall not be opened to the inspection of the opposing parties until each one shall have been filed, or the time for such filing, with any extension thereof, shall have expired, and not then unless they have been examined by the proper officer and found to be satisfactory.

Any party in default in filing his preliminary statement shall not have access to the preliminary statement or statements of his opponent or opponents until he has either filed his statement or waived his right thereto, and agreed to stand upon his record date.

A party who alleges no date in his preliminary statement earlier than the filing of the application or applications of the other party or parties shall not have access to the preliminary statement of said party or parties.

112. If, on examination, a statement is found to be defective in any particular, the party shall be notified of the defect and wherein it consists, and a time assigned within which he must cure the same by an amended statement; but in no case will the original or amended statement be returned to the party after it has been filed. Unopened statements will be removed from interference files and preserved by the office, and in no case will such statements be open to the inspection of the opposing party without authority from the Commissioner. If a party shall refuse to file an amended statement he *may* be restricted to his record date in the further proceedings in the interference.

113. In case of material error arising through inadvertence or mistake, the statement may be corrected on motion (see Rule 153), *upon a satisfactory showing* that the correction is essential to the ends of justice. The motion to correct the statement must be made, if possible, before the taking of any testimony, and as soon as practicable after the discovery of the error.

114. If the junior party to an interference, or if any party thereto other than the senior party, fails to file a statement, or if his statement fails to overcome the *prima facie* case made by the respective dates of application, such party will be notified by the examiner of interferences that judgment upon the record will be rendered against him at the expiration of thirty days, unless cause is shown why such action should not be taken. Within this period any of the motions permitted by the rules may be brought. Motions brought after judgment on the record has been rendered will not be entertained unless sufficient reasons appear for the delay.

115. If a party to an interference fail to file a statement, testimony will not be received subsequently from him to prove that he made the invention at a date prior to his application.

116. The parties to an interference will be presumed to have made the invention in the chronological order in which they filed their completed applications for patents clearly disclosing the invention; and the burden of proof will rest upon the party who shall seek to establish a different state of facts.

117. The preliminary statement can in no case be used as evidence in behalf of the party making it."

There are many preliminary motions which may be made in interference cases. One usually employed is the motion to dissolve the interference upon the ground that there has been informality in creating the interference, or that a claim is not patentable to one of the parties, or that one of the parties has no right to make the claim in interference, or that counts of the issue have different meaning in the different cases or applications involved in the interference. Motions of this kind are accompanied by a motion to

transmit to the Law Examiner, and if the motion to transmit is granted, the Law Examiner passes upon the motion or motions to dissolve.

19. TESTIMONY IN INTERFERENCE CASES.

Interference cases involve the question of priority alone; although there are many cases in which the issue is said to be one of originality rather than one of priority, meaning that one of the parties claims that another party was not an independent inventor, or an inventor at all, of the subject matter, but merely stole the invention from his opponent. The Patent Office rules 154, 158, both inclusive, provide for the manner of taking testimony, service of notices, form of certificate of the officer by whom the depositions are taken, and these rules must be strictly adhered to because of the provision of Rule 159 that "evidence touching the matter at issue will not be considered on the hearing which shall not have been taken and filed in compliance with these rules." As the rules are extremely arbitrary, they must be closely studied and followed in every particular. It may be well to observe that documentary evidence should always be used, where it exists, in preference to unsupported oral testimony.

The taking of testimony by the several parties reverses the order in which their applications were filed, the burden of proof resting upon the one having the most recent filing date.

The testimony being taken and printed, the case is briefed and argued before the Examiner of Interferences, whose judgment is in the form of an award

of priority to one of the parties, or as to different parties in relation to the several counts in interference. Unless his decision is appealed from, Letters Patent will issue to the successful party or parties.

20. APPEALS IN INTERFERENCE CASES.

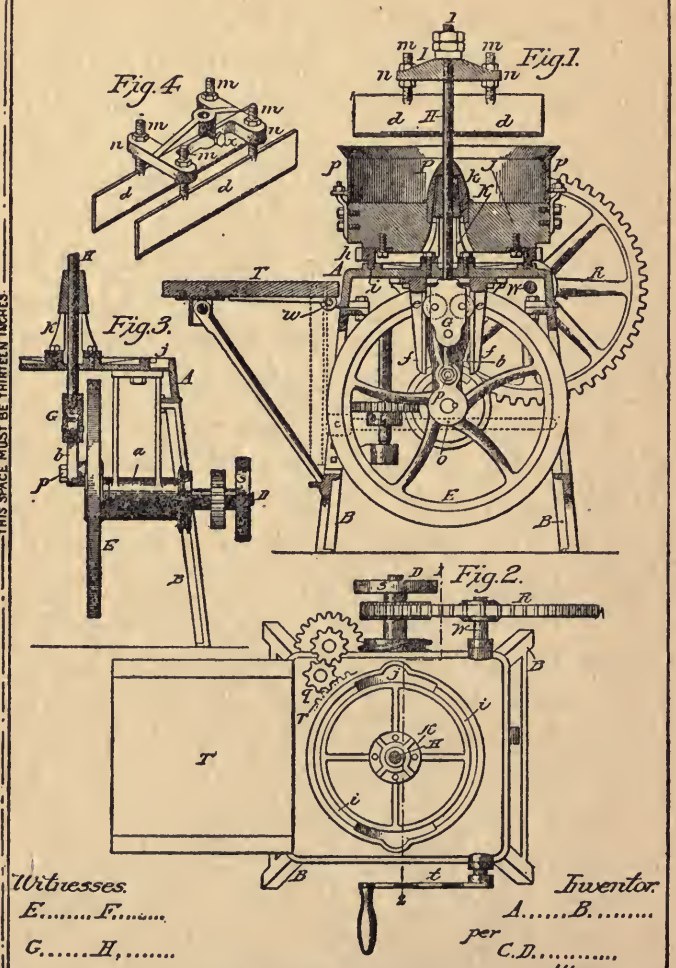
The defeated party in an interference has the right to an appeal, the series of appeals being from the Examiner of Interferences to the Board of Examiners-in-Chief, from the Board of the Commissioner, and from the Commissioner to the Court of Appeals of the District of Columbia. If the three tribunals of the Patent Office concur in their decisions, the result is seldom reversed by the Court of Appeals. The decision of the Court of Appeals, in turn, may be reviewed under §4915, Revised Statutes of the United States, quoted above. The number of appeals possible, and the expensive method of taking testimony have made interference procedure a subject of much adverse criticism. There have been attempts to eliminate the appeal to the Board of Examiners-in-Chief, and other attempts to provide for a single hearing in the Patent Office, from the result of which an appeal would lie to the Court of Appeals. But these attempts have been unavailing thus far.

FORMS OF PATENT APPLICATIONS.

Application for Patent on a Machine. The Form Provided by the Patent Office.

THE SIZE OF THE SHEET MUST BE EXACTLY
10 x 15 INCHES. SEE RULE 52.(2)

THIS SPACE MUST BE THIRTEEN INCHES.



Witnesses.
E.....F.....
C.....H.....

Inventor.
A.....B.....
per
C.D.....
Attorney.

THIS SPACE MUST BE EIGHT INCHES

To all whom it may concern:

Be it known that I, ..., a citizen of the United States, residing at ....., in the county of ..... and State of ..... (or subject, etc.), have invented a new and useful meat-chopping machine, of which the following is a specification:

My invention relates to improvements in meat-chopping machines in which vertically reciprocating knives operate in conjunction with a rotating chopping block; and the objects of my improvement are, first, to provide a continuously lubricated bearing for the block; second, to afford facilities for the proper adjustment of the knives independently of each other in respect to the face of the block; and, third, to reduce the friction of the reciprocating rod which carries the knives.

I attain these objects by the mechanism illustrated in the accompanying drawing, in which—

Figure 1 is a vertical section of the entire machine; Fig. 2, a top view of the machine as it appears after the removal of the chopping block and knives; Fig. 3, a vertical section of a part of the machine on the line 1 2, Fig. 2; and Fig. 4, a detailed view in perspective of the reciprocating crosshead and its knives.

Similar letters refer to similar parts throughout the several views.

The table or plate A, its legs or standards B B, and the hanger *a*, secured to the underside of the table, constitute the framework of the machine. In the hanger *a* turns the shaft D, carrying a fly-wheel E, to the hub of which is attached a crank *o*, and a crank-pin *p*, connected by a link *b*, to a pin passing through a crosshead G, and to the latter is secured a rod H, having at its upper end a crosshead I, carrying the adjustable chopping knives *d d*, referred to hereinafter.

The crosshead G, reciprocated by the shaft D, is provided with anti-friction rollers *e e*, adapted to guides *f f*, secured to the underside of the table A, so that the reciprocation of this crosshead may be accompanied with as little friction as possible.

To the underside of a wooden chopping block J is secured an annular rib *h*, adapted to and bearing in an annular groove *i* in the table A. (See Figs. 1 and 2.) This annular groove or channel is not of the same depth throughout, but communicates at one or more points (two in the present instance) with pockets or receptacles *j j* wider than the groove and containing supplies of oil, in contact with which the rib *h* rotates, so that the continuous lubrication of the groove and rib is assured. The rod H passes through and is guided by a central stand K, secured to the table A, and projecting through a central opening in the chopping block without being in contact therewith, the upper portion of the said stand being contained within a cover *k*, which is secured

to the block, and which prevents particles of meat from escaping through the central opening of the same.

The cross-head I, previously referred to, and shown in perspective in Fig. 4, is vertically adjustable on the rod H, and can be retained after adjustment by a set-screw *x*, the upper end of the rod being threaded for the reception of nuts, which resist the shocks imparted to the cross-head when the knives are brought into violent contact with the meat or the chopping-block.

The knives *d d* are adjustable independently of each other and of the said cross-head, so that the coincidence of the cutting-edge of each knife with the face of the chopping-block may always be assured.

I prefer to carry out this feature of my invention in the manner shown in Fig. 4, where it will be seen that two screw-rods *m m* rise vertically from the back of each knife and pass through lugs *n n* on the cross-head, each rod being furnished with two nuts, one above and the other below the lug through which it passes. The most accurate adjustment of the knives can be effected by the manipulation of these nuts.

A circular casing *p* is secured to the chopping-block, so as to form on the same a trough P for keeping the meat within proper bounds; and on the edge of the annular rib *h*, secured to the bottom of the block, are teeth *r*, for receiving those of a pinion *q*, which may be driven by the shaft D through the medium of any suitable system of gearing, that shown in the drawing forming no part of my present invention.

This shaft D may be driven by a belt passing round the pulleys *s*, or it may be driven by hand from a shaft W, furnished at one end with a handle *t*, and at the other with a cog-wheel R, gearing into a pinion on the said shaft D.

A platform T may be hinged, as at *w*, to one edge of the table A, to support a vessel in which the chopped meat can be deposited. The means by which it may be supported are shown in full lines, and the most convenient method of disposing of it when not in use is shown in dotted lines, in Fig. 1.

I am aware that prior to my invention meat-chopping machines have been made with vertically-reciprocating knives operating in conjunction with rotating chopping-blocks. I therefore do not claim such a combination broadly; but

I claim:

1. The combination, in a meat-chopping machine, of a rotary chopping-block having an annular rib, with a table having an annular recess and a pocket communicating with the said recess, all substantially set forth.

2. In a meat-chopping machine, the combination of a rotary chopping-block with a reciprocating cross-head carrying knives, each of which is vertically adjustable on the said cross-head independently of the other, substantially as described.

3. The knife *d*, having two screw-rods, *m m*, attached to its back, substantially as shown, for the purpose specified.

4. The combination, in a meat-chopping machine, of the reciprocating rod, carrying the knives, the cross-head secured to the said rod, and having anti-friction rollers, with guides, adapted to the said rollers, all substantially as set forth.

....

Witnesses:

....

....

Application for Product and Process; as Embodied in the Letters Patent.

UNITED STATES PATENT OFFICE

ARCHIBALD S. B. LITTLE, OF NASHVILLE, TENNESSEE. PAINT COMPOSITION AND PROCESS OF MAKING SAME.

1,072,476. Specification of Letters Patent. Patented Sept. 9, 1913. No Drawing. Application filed October 16, 1912. Serial No. 726,051.

To all whom it may concern:

Be it known that I, ARCHIBALD S. B. LITTLE, a subject of the King of Great Britain, residing at Nashville, in the county of Davidson and State of Tennessee, have invented a new and useful Paint Composition and Process of Making the Same, of which the following is a specification.

The paint forming the subject-matter of the present invention has special application in connection with the shell of gas-holders or gasometers. This shell dips as is well known into a body of water more or less saturated with light oils such as hydrocarbon oils, benzol, and the like deposited thereon by condensation from the carbureted water-gas.

The object of my invention is to produce a paint which when spread over the surface of the gasometer shell, will resist the action of these oils, the coat of paint being thus left unimpaired and protecting the metal of which the shell is constructed.

The process or method of compounding the ingredients of the paint may be described as follows:—To prepare the vehicle of my compound I dissolve for example fifty (50) pounds of rosin in its own weight of petroleum spirit such as gasolene, benzin (or equivalent hydrocarbon). I then heat 50 pounds of linseed oil (raw or boiled) with five (5) pounds of red lead and five (5) pounds of litharge to a consistence such as to solidify on cooling. This mixture (of linseed oil, red lead, and litharge) while hot is dissolved in fifty (50) pounds of turpentine. This solution is then mixed with the solution of

rosin in the petroleum spirit referred to and serves as the vehicle. To make a durable paint, a proper proportion (to suit the painter) of Venetian red (red oxid, or equivalent mineral or carbon pigments or any combination of the same) is added; and if it be desired that the paint shall dry quickly it may be thinned with gasolene, and just before applying, adding a little red lead thinned down with sufficient boiled linseed oil to cause the mixture to pass through a 120 mesh sieve before running it into the bulk, stirring the latter during the admixture. To the mass (with or without the final admixture of strained red lead aforesaid) is added about four (4) per cent. by weight of zinc chromate, when the compound is ready for use.

If the ingredients are mixed in smaller quantities, the same relative proportions by weight as outlined above should be adhered to, the specific weights given serving merely as an example. To maintain the proper relative proportions, and at the same time vary the weights of the ingredients, would obviously fall within the purview of the practical painter.

Having described my invention, what I claim is:—

1. In the manufacture of paint, the process of dissolving a quantity of resin in a hydrocarbon then heating a quantity of linseed oil mixed with red lead and litharge to a consistence such that the mass solidifies on cooling, dissolving said mass while hot in a suitable quantity of turpentine, and adding the solution to the original solution of resin and hydrocarbon.

2. In the manufacture of paint, the process of dissolving a suitable quantity of rosin in its own weight of petroleum spirit, heating a mixture of linseed oil with a quantity of red lead and litharge to a point where the mass solidifies on cooling, dissolving said mass while hot in turpentine, and adding the solution to the original solution of rosin and petroleum spirit.

3. In the manufacture of paint, the process of dissolving fifty pounds of rosin in its own weight of benzin, heating fifty pounds of linseed oil with five pounds of red lead and five pounds of litharge to a point where the mass solidifies on cooling, dissolving said mass while hot in fifty pounds of turpentine, and adding thereto the original solution of rosin in benzin.

4. In a paint composition the combination of a vehicle composed of a solution of fifty pounds of rosin in fifty pounds of benzin, mixed with a solution of fifty pounds of linseed oil solidified with five pounds of red lead and five pounds of litharge, in fifty pounds of turpentine, a pigment mixed therewith, and a metallic chromate forming about four per cent. of the entire mixture.

5. In a paint composition the combination of a vehicle com-

posed of a solution of fifty pounds of rosin in fifty pounds of benzin, mixed with a solution of fifty pounds of linseed oil solidified with five pounds of red lead and five pounds of litharge, in fifty pounds of turpentine, an insoluble pigment mixed therewith, and four per cent. by weight of the entire mass, of zinc chromate.

6. In a paint composition the combination of a vehicle composed of a solution of fifty pounds of rosin in fifty pounds of benzin, mixed with a solution of fifty pounds of linseed oil solidified with five pounds of red lead and five pounds of litharge, in fifty pounds of turpentine, a mineral pigment mixed therewith, a gasolene thinner, and four per cent. by weight of the entire mass, of zinc chromate.

7. In a paint composition the combination of a vehicle composed of a solution of fifty pounds of rosin in fifty pounds of benzin, mixed with a solution of fifty pounds of linseed oil solidified with five pounds of red lead and five pounds of litharge, in fifty pounds of turpentine, a mineral pigment mixed therewith, a gasolene thinner, red lead thinned with boiled linseed oil to cause the mixture to pass through a 120 mesh sieve, and substantially four per cent. of zinc chromate.

In testimony whereof I affix my signature, in presence of two witnesses.

ARCHIBALD S. B. LITTLE.

Witnesses:

GILBERT LITTLE,

NATALIE L. GABRIEL.

University of California
SOUTHERN REGIONAL LIBRARY FACILITY
405 Hilgard Avenue, Los Angeles, CA 90024-1388
Return this material to the library
from which it was borrowed.

RECEIVED
MAY 21 1992
EMS LIBRARY

Gaylord
GAYLAMOUNT®
PAMPHLET BINDER
Syracuse, N.Y.
Stockton, Calif.

UC SOUTHERN REGIONAL LIBRARY FACILITY
A 000 690 092 2

Univers
Sout
Lib